

for the failure of any new shareholder to file a timely consent under section 1372(e)(1) of the Code, for any of the taxable years of the corporation between and including the earliest taxable year determined under subparagraph (1) of this paragraph, and the taxable year during which the corporation files an election under paragraph (b) of this section, if—

(1) The corporation's election under section 1372(a) of the Code would have terminated for a taxable year under section 1372(e)(5) of the Code in the event it had not made an election under paragraph (b) of this section, and

(2) A proper consent under section 1372(e)(1) of the Code is filed by such new shareholder with the corporation's election under paragraph (b) of this section.

[T.D. 6912, 32 FR 3343, Feb. 28, 1967. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

**§ 301.9100-20T Election to treat certain distributions as made on the last day of the taxable year.**

(a) *In general.* Section 233(b) of the Revenue Act of 1964 (78 Stat. 112) amends the Internal Revenue Code of 1954 by adding to section 1375 a new subsection (e) (relating to certain distributions after close of taxable year). Section 1375(e) provides that a corporation, with the consent of its shareholders, may elect, for purposes of chapter 1 of the Code, to treat a distribution of money made after the close of the taxable year as made, and as received by its shareholders, on the last day of such taxable year if the following conditions are satisfied:

(1) The corporation makes a distribution of money to its shareholders on or before the 15th day of the third month following the close of a taxable year with respect to which it was an electing small business corporation within the meaning of section 1371(b);

(2) Such distribution is made pursuant to a resolution of the corporation's board of directors, adopted before the close of such taxable year, to distribute to its shareholders all or a part of the proceeds of one or more sales of capital assets, or of property described in section 1231(b), made during such taxable year; and

(3) Each shareholder on the day such distribution is received—

(i) Owns the same proportion of the stock of the corporation on such day as he owned on the last day of such taxable year, and

(ii) Consents to such election. Section 1375(e) applies only with respect to taxable years of corporations beginning after December 31, 1957.

(b) *Time and manner for making election—*(1) *Taxable years ending after February 26, 1964.* For taxable years ending after February 26, 1964, an election under section 1375(e) with respect to a taxable year shall be made by attaching to the corporation income tax return for such taxable year, filed not later than the time (including extensions thereof) prescribed by law, the following documents:

(i) A statement that the corporation elects the application of section 1375(e) and the date and amount of each distribution to which the election applies;

(ii) A copy of the resolution of the board of directors referred to in paragraph (a)(2) of this section; and

(iii) A statement of the consent of each shareholder of the corporation containing the information required by, and filed in the manner provided in, paragraph (c) of this section.

(2) *Taxable years beginning after December 31, 1957, and ending on or before February 26, 1964.* For taxable years beginning after December 31, 1957, and ending on or before February 26, 1964, an election under section 1375(e) with respect to a taxable year shall be made on or before June 25, 1964, by either attaching the documents described in subparagraph (1) of this paragraph to its income tax return for such taxable year, or by filing such documents with the district director with whom the corporation has filed, or intends to file, its income tax return for such taxable year.

(3) *Election is binding.* An election under subparagraph (1) or (2) of this paragraph is binding and may not be withdrawn.

(c) *Shareholders' consent.* The consent of a shareholder to an election under section 1375(e) shall be in the form of a statement signed by the shareholder in which such shareholder consents to the election of the corporation. Such

shareholder's consent is binding and may not be withdrawn after a valid election is made by the corporation. Each person who is a shareholder of the electing corporation must consent to the election; thus, where stock of the corporation is owned by a husband and wife as community property (or the income from which is community property), or is owned by tenants in common, joint tenants, or tenants by the entirety, each person having a community interest in such stock and each tenant in common, joint tenant, and tenant by the entirety must consent to the election. The consent of a minor shall be made by the minor or by his legal guardian, or his natural guardian if no legal guardian has been appointed. The consent of an estate shall be made by the executor or administrator thereof. The statement shall set forth the name, address, and account

number of the corporation and of the shareholder, the date the distribution is received, the number and proportion of the shares of stock of the corporation owned by him on the date the distribution is received, and the number and proportion of such shares owned by him on the last day of the taxable year of the corporation with respect to which the election is made. The consents of all shareholders may be incorporated in one statement.

[T.D. 6719, 29 FR 4771, Apr. 3, 1964, Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

**§ 301.9100-21 References to other temporary elections under various tax acts.**

Regulations regarding elections under various other tax acts are found at the following sections in title 26 of the Code of Federal Regulations:

Section of 26 CFR	Description of election
5c.168(f)(8)-2 .....	Election to characterize transaction as a section 168(f)(8) lease, under the Economic Recovery Tax Act of 1981.
5c.1256-1 .....	Election with respect to property held on June 23, 1981, under section 508(c) of the Economic Recovery Tax Act of 1981.
5c.1256-2 .....	Election with respect to taxable years beginning before June 23, 1981, and ending after June 22, 1981, under section 509 of the Economic Recovery Tax Act of 1981.
7.48-1 .....	Election to have investment credit for movie and television films determined in accordance with previous litigation, under the Tax Reform Act of 1976.
7.48-2 .....	Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975, under the Tax Reform Act of 1976.
7.48-3 .....	Election to apply the amendments made by sections 804 (a) and (b) of the Tax Reform Act of 1976 to property described in section 50(a) of the Code.
7.57(d)-1 .....	Election with respect to straight line recovery of intangibles, under the Tax Reform Act of 1976.
11.402(a)(4)(B)-1 .....	Election to treat an amount as a lump sum distribution, under the Employee Retirement Income Security Act of 1974.
11.410-1 .....	Election by church to have participation, vesting, funding, etc., provisions apply, under the Employee Retirement Income Security Act of 1974.
11.412(c)-7 .....	Election to treat certain retroactive plan amendments as made on the first day of the plan year, under the Employee Retirement Income Security Act of 1974.
11.412(c)-11 .....	Election with respect to bonds, under the Employee Retirement Income Security Act of 1974.
11.415(c)(4)-1 .....	Special elections for section 403(b) annuity contracts purchased by educational institutions, hospitals and home health service agencies, under the Employee Retirement Income Security Act of 1974.
12.4 .....	Election of Class Life Asset Depreciation Range System (ADR), under the Revenue Act of 1971.
12.7 .....	Election to be treated as a DISC, under the Revenue Act of 1971.
12.8 .....	Elections with respect to net leases of real property, under the Revenue Act of 1971.
12.9 .....	Election to postpone determination with respect to the presumption described in section 183(d), under the Revenue Act of 1971.
15.1-1 .....	Elections to deduct, relating to exploration expenditures in the case of mining.
15.1-2 .....	Revocation of election to deduct, relating to exploration expenditures in the case of mining.
15.1-3 .....	Elections as to methods of recapture, relating to exploration expenditures in the case of mining.
18.1361-1 .....	Election to treat qualified subchapter S trust as a trust described in section 1361(c)(2)(A)(i), under the Subchapter S Revision Act of 1982.
18.1362-1 .....	Election to be an S corporation, under the Subchapter S Revision Act of 1982.
18.1362-3 .....	Revocation of election, under the Subchapter S Revision Act of 1982.
18.1362-5 .....	Election not to have new passive income rules apply during 1982, under the Subchapter S Revision Act of 1982.